

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: DEALER MANAGEMENT
SYSTEMS ANTITRUST LITIGATION**

This Document Relates To:

THE DEALERSHIP CLASS ACTION

MDL No. 2817

Case No. 18-cv-00864

Hon. Robert M. Dow, Jr.

Magistrate Judge Jeffrey T. Gilbert

PUBLIC-REDACTED

**DEALERSHIP COUNTER-DEFENDANTS' STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT
ON CDK GLOBAL, LLC'S COUNTERCLAIMS**

Counter-Defendants ACA Motors, Inc., d/b/a Continental Acura; Baystate Ford Inc.; Cherry Hill Jaguar; Cliff Harris Ford, LLC, d/b/a Warrensburg Ford; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; JCF Autos LLC, d/b/a Stevens Jersey City Ford; Jericho Turnpike Sales LLC, d/b/a Ford & Lincoln of Smithtown; Marshall Chrysler Jeep Dodge, L.L.C., d/b/a Marshall Chrysler Jeep Dodge Ram; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi; Patchogue 112 Motors, LLC, d/b/a Stevens Ford; Waconia Dodge, Inc.; Warrensburg Chrysler Dodge Jeep, L.L.C., d/b/a Warrensburg Chrysler Dodge Jeep Ram Fiat (collectively, “Dealership Counter-Defendants”) submit this Statement pursuant to Federal Rule of Civil Procedure 56(c)(1) and Local Rule of Civil Procedure 56.1, in support of their Motion for Summary Judgment Motion on CDK Global LLC’s Counterclaims.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Counterclaim-Plaintiff CDK Global LLC (“CDK”) is a publicly traded Delaware corporation with its corporate headquarters and principal place of business located at 1950 Hassell Road, Hoffman Estates, Illinois. CDK provides DMS software and services to automobile dealerships throughout the United States, including in Illinois, and has more than \$2 billion in annual revenue. CDK’s Answer and Affirmative and Additional Defenses to the Dealership Consolidated Class Action Complaint and CDK Global, LLC’s Counterclaims, ECF No. 522 (“Counterclaims”) ¶ 4. In 2014, CDK was spun off from the dealer services business of ADP, LLC (“ADP”), and is now an independent, publicly traded company. *Id.*; Ex. H, Deposition of Steve

Anenen (CDK Chief Executive Officer) (“Anenen Tr.”) (Apr. 10, 2019) at 202:21-203:8. (As used herein, “CDK” includes the business unit of ADP formerly known as ADP Dealer Services).

2. The Dealership Counter-Defendants are automotive dealerships and are organized and domiciled as follows:

- a. Dealership Counter-Defendant ACA Motors, Inc., d/b/a Continental Acura, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 2275 Aurora Avenue, Naperville, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 7.
- b. Dealership Counter-Defendant Baystate Ford Inc. is a corporation organized and existing under the laws of the state of Massachusetts with its principal place of business located at 703 Washington Street, South Easton, Massachusetts, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 16.
- c. Dealership Counter-Defendant Cherry Hill Jaguar is a corporation organized and existing under the laws of the state of New Jersey with its principal place of business located at 2000 Route 70 East, Cherry Hill, New Jersey, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 21.
- d. Dealership Counter-Defendant Cliff Harris Ford, LLC, doing business as Warrensburg Ford, is a corporation organized and existing under the laws of the state of Missouri with its principal place of business located at 330

E. Young Street, Warrensburg, Missouri, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 17.

- e. Dealership Counter-Defendant Continental Autos, Inc., d/b/a Continental Toyota, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 6701 South La Grange Road, Hodgkins, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 12.
- f. Dealership Counter-Defendant Continental Classic Motors, Inc., d/b/a Continental Autosports, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 420 E. Ogden Avenue, Hinsdale, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 8.
- g. Dealership Counter-Defendant 5800 Countryside, LLC, d/b/a Continental Mitsubishi, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 5800 South La Grange Road, Countryside, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 9.
- h. Dealership Counter-Defendant HDA Motors, Inc., d/b/a Continental Honda, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 5901 South La Grange Road, Countryside, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 10.

- i. Dealership Counter-Defendant H & H Continental Motors, Inc., d/b/a Continental Nissan, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 5750 South La Grange Road, Hodgkins, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 11.
- j. Dealership Counter-Defendant JCF Autos LLC, d/b/a Stevens Jersey City Ford, is a corporation organized and existing under the laws of the state of New Jersey with its principal place of business located at 740 Route 440, Jersey City, New Jersey, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 22.
- k. Dealership Counter-Defendant Jericho Turnpike Sales LLC, d/b/a Ford & Lincoln of Smithtown, is a corporation organized and existing under the laws of the state of New York with its principal place of business located at 440 Jericho Turnpike, Smithtown, New York, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 23.
- l. Dealership Counter-Defendant Marshall Chrysler Jeep Dodge, L.L.C., d/b/a Marshall Chrysler Jeep Dodge Ram, is a corporation organized and existing under the laws of the state of Missouri with its principal place of business located at 1450 W. Arrow Street, Marshall, Missouri, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 18.
- m. Dealership Counter-Defendant Naperville Zoom Cars, Inc., d/b/a Continental Mazda, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 2363

Aurora Avenue, Naperville, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 13.

- n. Dealership Counter-Defendant NV Autos, Inc., d/b/a Continental Audi, is a corporation organized and existing under the laws of the state of Illinois with its principal place of business located at 1527 Aurora Avenue, Naperville, Illinois, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 14.
- o. Dealership Counter-Defendant Patchogue 112 Motors LLC, d/b/a Stevens Ford, is a corporation organized and existing under the laws of the state of New York with its principal place of business located at 507 Route 112, Patchogue, New York, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 24.
- p. Dealership Counter-Defendant Waconia Dodge, Inc. is a corporation organized and existing under the laws of the state of Minnesota with its principal place of business located at 905 Strong Drive, Waconia, Minnesota, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 26.
- q. Dealership Counter-Defendant Warrensburg Chrysler Dodge Jeep, L.L.C., d/b/a Warrensburg Chrysler Dodge Jeep Ram Fiat, is a corporation organized and existing under the laws of the state of Missouri with its principal place of business located at 329 E. Young Street, Warrensburg, Missouri, and is engaged in the business of purchasing and selling automobiles. Counterclaims ¶ 19.

3. This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1337, and venue is proper in this District pursuant to 28 U.S.C. §§ 1391. Counterclaims ¶¶ 27, 28, 30.

4. This Court has personal jurisdiction over Dealership Counter-Defendants because many of the Dealership Counter-Defendants are located and do business in the District in which this action was filed. Counterclaims ¶ 29.

5. Each of the Dealership Counter-Defendants entered into a “Master Service Agreement” (“MSA”) with CDK. Counterclaims ¶¶ 43, 48; Ex. QQQ, BAYSTATE0011689 to 703; Ex. RRR, CHERRY_HILL0001072 to 087; Ex. RR, CLIFF_HARRIS0001923 to 937; Ex. A, CONTINENTAL0056450 to 552 (DX 528); Ex. SSS, STEVENS0001710 to 724; Ex. TTT, WACONIA0002436 to 2451.

6. Each of the MSAs between CDK and the Dealership Counter-Defendants contains a provision reflecting the parties’ choice of law, stating “[t]his agreement shall be governed in all respects by the laws of the State of Illinois, without giving effect to principles of conflicts of law.” Ex. A, CONTINENTAL0056450 to 552 (DX 528) (Master Services Agreement between CDK and Continental Honda, dated Oct. 31, 2017) at § 18(I).

7. Despite CDK’s assertions that it would quantify damages through expert opinion testimony, CDK has not submitted any quantification of actual financial losses which it suffered as a result of an alleged breach of contract by any of the Dealership Counter Defendants. Ex. D, Dealership Counter-Defendants’ First Set of Interrogatories Regarding CDK’s Counterclaims, dated Mar. 8, 2019 (“Interrogatories”) (Interrogatory No. 11 requested identification, for each Dealership Counter-Defendant, of “all ‘losses, expenses and other damages’ that CDK allegedly suffered as a result of each Dealership Counter-Defendant’s alleged . . . breaches of contract [and

CDK's other counterclaims against Dealership Counter-Defendants], including the date, and amount of each such loss, expense and other damage."); Ex. E, CDK's Response to Dealership Counter-Defendants' First Set of Interrogatories, dated Jul. 3, 2019 (CDK's response to Interrogatory No. [REDACTED]

[REDACTED] Ex. F, Expert Damages Report of Daniel L. Rubinfeld In the Matter of: CDK Global, LLC Counterclaims re Authenticom and the Putative Dealer Class, dated Aug. 26, 2019 ("Rubinfeld Report") at 5

[REDACTED] Ex. G, Deposition of Daniel L. Rubinfeld (CDK causation and damages expert) ("Rubinfeld Tr.") (Feb. 6-7, 2020) at 364:16-365:4 [REDACTED]

[REDACTED] Ex. B, Feb. 28, 2020 letter from Dealership Interim Lead Class Counsel Peggy J. Wedgworth to CDK counsel Britt M. Miller (inquiring whether CDK would voluntarily dismiss its First Counterclaim based on its failure to calculate any actual damages); Ex. C, Mar. 4, 2020 letter from Britt M. Miller to Peggy J. Wedgworth (CDK is only seeking "declaratory and injunctive relief . . . and/or nominal damages").

8. [REDACTED]

[REDACTED] Ex. I, Deposition of Howard Gardner (CDK Vice President for Data Services, with responsibility for CDK's 3PA Program) ("Gardner Tr.") (Mar.

7, 2019) at 523:18-524:17 [REDACTED]

[REDACTED]); Ex. J, (PX 977) (list of named dealership plaintiffs).

9. CDK has previously disabled user IDs which, it alleges, were improperly provided by various Dealership Counter-Defendants to Authenticom and other persons. Counterclaims ¶¶ 104-08, 112, 115-18, 121-22, 125, 128-31.

10. Dealership Counter-Defendant Baystate Ford, Inc., is not currently providing login credentials to independent data integrators. Ex. K, Dealer Data Exchange (“DDX”) Non-Authorized Access Report from Dealership Counter-Defendant Baystate Ford Inc., dated Mar. 5, 2020.

11. Dealership Counter-Defendants ACA Motors, Inc., d/b/a Continental Acura is not currently providing login credentials to independent data integrators. Ex. L, DDX Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

12. Dealership Counter-Defendant Continental Autos, Inc., d/b/a Continental Toyota is not currently providing login credentials to independent data integrators. Ex. L, DDX Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

13. Dealership Counter-Defendant Continental Classic Motors, Inc., d/b/a Continental Autosports is not currently providing login credentials to independent data integrators. Ex. L, DDX Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

14. Dealership Counter-Defendant 5800 Countryside, LLC, d/b/a Continental Mitsubishi is not currently providing login credentials to independent data integrators. Ex. L, DDX Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

15. Dealership Counter-Defendant HDA Motors, Inc., d/b/a Continental Honda; Ex. L, DDX Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

16. Dealership Counter-Defendant H & H Continental Motors, Inc., d/b/a Continental Nissan is not currently providing login credentials to independent data integrators. Ex. L, DDX

Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

17. Dealership Counter-Defendant Naperville Zoom Cars, Inc., d/b/a Continental Mazda is not currently providing login credentials to independent data integrators. Ex. L, DDX Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

18. Dealership Counter-Defendant NV Autos, Inc., d/b/a Continental Audi. is not currently providing login credentials to independent data integrators. Ex. L, DDX Non-Authorized Access Report from ACA Motors, Inc., d/b/a Continental Acura; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi, dated May 14, 2020.

19. Dealership Counter-Defendant JCF Autos LLC, d/b/a Stevens Jersey City Ford is not currently providing login credentials to independent data integrators. Ex. M, DDX Non-Authorized Access Report from JCF Autos LLC, d/b/a Stevens Jersey City Ford; Jericho Turnpike

Sales LLC, d/b/a Ford & Lincoln of Smithtown; Patchogue 112 Motors, LLC, d/b/a Stevens Ford, dated Mar. 12, 2020.

20. Dealership Counter-Defendant Jericho Turnpike Sales LLC, d/b/a Ford & Lincoln of Smithtown is not currently providing login credentials to independent data integrators. Ex. M, DDX Non-Authorized Access Report from JCF Autos LLC, d/b/a Stevens Jersey City Ford; Jericho Turnpike Sales LLC, d/b/a Ford & Lincoln of Smithtown; Patchogue 112 Motors, LLC, d/b/a Stevens Ford, dated Mar. 12, 2020.

21. Dealership Counter-Defendant Patchogue 112 Motors, LLC, d/b/a Stevens Ford is not currently providing login credentials to independent data integrators. Ex. M, DDX Non-Authorized Access Report from JCF Autos LLC, d/b/a Stevens Jersey City Ford; Jericho Turnpike Sales LLC, d/b/a Ford & Lincoln of Smithtown; Patchogue 112 Motors, LLC, d/b/a Stevens Ford, dated Mar. 12, 2020.

22. Dealership Counter-Defendant Waconia Dodge, Inc, is not currently providing login credentials to independent data integrators. Ex. N, DDX Non-Authorized Access Report from Waconia Dodge, Inc., dated Mar. 9, 2020.

23. Dealership Counter-Defendant Cliff Harris Ford, LLC, d/b/a Warrensburg Ford. is not currently providing login credentials to independent data integrators. Ex. O, DDX Non-Authorized Access Report from Cliff Harris Ford, LLC, d/b/a Warrensburg Ford; Marshall Chrysler Jeep Dodge, L.L.C., d/b/a Marshall Chrysler Jeep Dodge Ram; Warrensburg Chrysler Dodge Jeep, L.L.C., d/b/a Warrensburg Chrysler Dodge Jeep Ram Fiat, dated Mar. 3, 2020.

24. Dealership Counter-Defendant Marshall Chrysler Jeep Dodge, L.L.C., d/b/a Marshall Chrysler Jeep Dodge Ram, is not currently providing login credentials to independent data integrators. Ex. O, DDX Non-Authorized Access Report from Cliff Harris Ford, LLC, d/b/a

Warrensburg Ford; Marshall Chrysler Jeep Dodge, L.L.C., d/b/a Marshall Chrysler Jeep Dodge Ram; Warrensburg Chrysler Dodge Jeep, L.L.C., d/b/a Warrensburg Chrysler Dodge Jeep Ram Fiat, dated Mar. 3, 2020.

25. Dealership Counter-Defendant Warrensburg Chrysler Dodge Jeep, L.L.C., d/b/a Warrensburg Chrysler Dodge Jeep Ram Fiat, is not currently providing login credentials to independent data integrators. Ex. O, DDX Non-Authorized Access Report from Cliff Harris Ford, LLC, d/b/a Warrensburg Ford; Marshall Chrysler Jeep Dodge, L.L.C., d/b/a Marshall Chrysler Jeep Dodge Ram; Warrensburg Chrysler Dodge Jeep, L.L.C., d/b/a Warrensburg Chrysler Dodge Jeep Ram Fiat, dated Mar. 3, 2020.

26. CDK alleges that at least since 1994, its MSA has contained provisions that prohibit dealers from issuing login credentials to independent data integrators. Counterclaims ¶¶ 44-50. The MSA provisions relied on by CDK have contained substantially the same language since 1994. Ex. H, Anenen Tr. at 259:16-260:23 [REDACTED]

[REDACTED].

27. Currently there are 847 applications certified in CDK's 3PA/Global Partner Program. Ex. P, List of Global Partner Program applications, CDK Website (last visited May 18, 2020).

28. [REDACTED]
[REDACTED]
[REDACTED]. Ex. NN,
CDK-2673485 to 492 at CDK-2673485 (PX 885) [REDACTED]

[REDACTED]

[REDACTED]

29. Throughout 2006, CDK issued public statements in support of dealer-permissioned access. Ex. UUU, CDK-3121097 to 099 at CDK-3121098 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]); Ex. U, CDK-3122887 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. V, CDK-0012547 to 549 at

CDK-0012549 (PX 1037) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. CDK continued to issue public statements in support of dealer-permissioned access in 2007. Ex. W, CDK-0012649 to 652 at CDK-0012652 (PX 1038) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED] Ex. Y,

CDK-0012545 to 546 at CDK-0012546 (PX 1179) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. X, CDK-3122936 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. Z, CDK-0804065 to 068 at CDK-0804065 (PX 933) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. [REDACTED]

[REDACTED]. Ex. AA, Deposition of Michael D. Winston (CDK economics expert) (“Winston Tr.”) (Jan. 10, 2020) at 172:11-173:1, 182:22-183:9, 213:19-22, 223:17-224:4, 244:2-10, 245:14-22. ([REDACTED])

[REDACTED]; Ex.UU, Expert Report of Michael D. Winston, Ph.D., dated Nov. 15, 2019 (“Winston Report”) ¶ 307 [REDACTED]

[REDACTED] Ex. BB, Deposition of Robert Brockman (Reynolds Chief Executive Officer) (“Brockman Tr.”) (Jan. 16, 2019) at 77:9-78:17 ([REDACTED]); Ex. VVV, CDK-1326294 to 295 (PX 1573) ([REDACTED]); Ex. CC, CDK-3120854 to 860 ([REDACTED]); Ex. DD, CDK-3118702 to 711 at CDK-3118709 ([REDACTED]); Ex. AA, Winston Tr. at 183:11-16 [REDACTED]; *id.* at 193:5-11 [REDACTED] Ex. GG, Deposition of Michael Noser (CDK Sr. Director of Operations for Data Services Group) (“Noser Tr.”) (Feb. 13, 2019) at 49:3-50:16, 49:18-49:9 ([REDACTED])

32. [REDACTED]

[REDACTED] Ex. DD, CDK-3118702 to 711 at CDK-3118709 ([REDACTED]); Ex. AA, Winston Tr. at 183:11-16 [REDACTED]; *id.* at 193:5-11 [REDACTED] Ex. GG, Deposition of Michael Noser (CDK Sr. Director of Operations for Data Services Group) (“Noser Tr.”) (Feb. 13, 2019) at 49:3-50:16, 49:18-49:9 ([REDACTED])

[REDACTED]

[REDACTED] Ex. HH, Deposition of Malcolm Thorne (former CDK Executive Vice President & Chief Global Strategy Officer) (“Thorne Tr.”) (Feb. 7, 2019) at 40:24-41:9 [REDACTED]

[REDACTED] Ex. EE, CDK-2878952 to 954 at CDK-2878953 (PX 835) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]); Ex. E, CDK’s Responses and Objections to Dealership Class Plaintiffs’ First Set of Interrogatories Concerning CDK’s Counterclaims (dated Jul. 3, 2019), Response to Interrogatory No. 3 ([REDACTED])

[REDACTED] Ex. FF, CDK-0847676 to 683 at CDK-0847679 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]).

33. [REDACTED]

[REDACTED]

[REDACTED] Ex. II, CDK-0050564 to 565 ([REDACTED])

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]).

34. [REDACTED]

[REDACTED]

[REDACTED]. Ex. GG, Noser Tr. at 142:21-143:1 ([REDACTED]); Ex. MM, CDK-1390278 to 280 at CDK-1390279.027 (PX 872) [REDACTED]

[REDACTED] Ex. JJ, Deposition of Kevin Distelhorst (CDK Vice President of Client Services) (“Distelhorst Tr.”) (Nov. 16, 2018) at 20:22-24 ([REDACTED]); Ex. I, Gardner Tr. at 40:20-41:12; 87:11-24; Ex. KK, Deposition of Hubert (“Trey”) Gerlich (CDK Sr. Director of Solutions Engineering) (“Gerlich Tr.”) (Nov. 28, 2018) at 18:12-19:8, 33:15-21, 51:17-52:9, 55:19-56:16, 169:8-170:3 ([REDACTED]

[REDACTED]); Ex. LL, CDK-2873095 to 097 at CDK2873095 (PX 945) [REDACTED]

[REDACTED]

[REDACTED] Ex. NN, CDK-2673485 to 492 (PX 885) ([REDACTED]

[REDACTED]

[REDACTED]

35. [REDACTED]. Ex. OO, CDK-2981832 to 835 at CDK-2981835 (PX 852) ([REDACTED]

[REDACTED].

36. [REDACTED]

[REDACTED] Ex. PP, CDK-0974988 to

989.007 at CDK-0974989.002 (PX 875) [REDACTED]

[REDACTED]

37. [REDACTED]. Ex. I, Gardner Tr. at 374:2-10; 406:19-410:8.

38. Several states have recently enacted statutes prohibiting DMS providers (like CDK) from interfering with dealers' efforts to grant access to their data by third parties through the issuance of login credentials. Ex. Q, H.R. 2418, 54th Leg., 1st Reg. Sess. (Ariz. 2019) (unanimously passed by the Arizona legislature); Ex. R, H.R. 3152, 80th Leg. Assemb., Reg. Sess. (Or. 2019); Ex. S, H.R. 617, 66th Leg., Reg. Sess. (Mont. 2019); Ex. T, H.R. 384, Gen. Assemb. Reg. Sess. (N.C. 2019).

39. Each of the dealerships identified by CDK in its counterclaims as the "Warrensburg" and "Continental" Counter-Defendants are paying licensees of CDK's DMS software. Ex. QQ, CONTINENTAL0028163 to 177 at § 4(A) (DX 523) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]); Ex. A, CONTINENTAL0056450 to 552 at CONTINENTAL0056526 (DX 528) at § 4(A) ([REDACTED]); Ex. RR,

CLIFF_HARRIS0001923 to 937 at § 4(A) ([REDACTED])

[REDACTED]); Ex. SS, CLIFF_HARRIS0001938 to 952 at § 4(A) ([REDACTED])

[REDACTED].); Ex. TT, CLIFF_HARRIS0001953 to 966 at § 4(A) ([REDACTED])

[REDACTED]

40. [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Ex. QQ, CONTINENTAL0028163 to 177 at § 2 (“Term of Agreement”), § 4(A) (“Software”) (DX 523) ([REDACTED]
[REDACTED]); Ex. A, CONTINENTAL0056450 to 552 at §§ 2, 4(A) ([REDACTED]); Ex. RR, CLIFF_HARRIS0001923 to 937 at §§ 2, 4(A) ([REDACTED]
[REDACTED]; Ex. SS, CLIFF_HARRIS0001938 to 952 at §§ 2, 4(A) ([REDACTED]
[REDACTED] Ex. TT, CLIFF_HARRIS0001953 to 966 at § 4(A) ([REDACTED]); Ex. WWW, CONTINENTAL0012870 to 873 at CONTINENTAL00128870 ([REDACTED]
[REDACTED] Ex. XXX, CONTINENTAL0012855 to 858 at CONTINENTAL00128855 ([REDACTED] [REDACTED] [REDACTED]
[REDACTED]); Ex. YYY, CONTINENTAL0012844 to 847 at CONTINENTAL0012844 ([REDACTED]
[REDACTED]”).

41. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Ex. DDD, Expert Report of Edward M. Stroz, dated Aug. 26, 2019 (“Stroz Report”) ¶ C51; Ex. EEE, Deposition of Edward M. Stroz (Jan. 23, 2020) (“Stroz Tr”) at 263:3-23 [REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]. Ex. DDD, Stroz Report ¶ C26; Ex. EEE, Stroz Tr. at 241:12-242:8.

43. CDK implemented its access controls (*i.e.*, CAPTCHA prompts and disabling of certain user accounts) in order to block data integrators' ability to extract data from dealers' DMSs – under the guise of enhancing DMS security. Ex. ZZ, CDK-2470059 to 060 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. AAA, CONTINENTAL0060014 (DX 530) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex.BBB, CDK-2470057 to 058 ([REDACTED])

[REDACTED]

[REDACTED]

44. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]. Ex. CCC, Reply Expert Report of Edward M. Stroz, dated Dec. 19, 2019 (“Stroz Reply Report”) ¶ 95 [REDACTED]

[REDACTED]

[REDACTED] Ex. DDD, Stroz Report ¶¶ 67-108 ([REDACTED])

45. [REDACTED]
[REDACTED]. Ex. YY, CDK-1468122 to 124 (PX 258) ([REDACTED])

[REDACTED]; Ex. JJ, Distelhorst Tr. at 304:3-305:17 ([REDACTED])

46. [REDACTED]
[REDACTED]
[REDACTED]. Ex. AAA, CONTINENTAL0060014 to 015 (DX 530) ([REDACTED])

[REDACTED]; Ex. GGG, Deposition of Mark Johnson. (“M. Johnson Tr.”) (Feb. 28, 2019) at 377:11-19 ([REDACTED])

[REDACTED]; *id.* at 237:9-13, 377:24-378:6

[REDACTED]
[REDACTED]).

47. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Ex. GGG, M. Johnson Tr. at 375:22-376:11.

48. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]” Ex. GGG, M. Johnson Tr. at 372:9-374:14,
375:12-20.

49. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] Ex. GGG, M. Johnson Tr. at 237:14-238:6.

50. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Ex. LLL,

CONTINENTAL0007941 at § 7.2 (DX 516) ([REDACTED])

[REDACTED]

51. There is no evidence that CDK ever notified any of the Continental Counter-Defendants that automated means were being used to circumvent CDK's CAPTCHA prompt; CDK sent no cease-and-desist letters, or any other communications notifying any of the Continental Counter-Defendants that CDK's CAPTCHA prompt was being improperly circumvented.

52. [REDACTED]

[REDACTED]

[REDACTED] Ex. MMM, CONTINENTAL0002981 to 985 (DX 529) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. EEE, Stroz Tr. at 244:22-246:2.

54. [REDACTED]

[REDACTED] Ex. HHH, Expert Report of Scott Tenaglia, dated Aug. 26, 2019 ("Tenaglia Report") at 9 ([REDACTED])

[REDACTED]

[REDACTED] *id.* at 8-9 ([REDACTED])

[REDACTED]

[REDACTED] *id.* at 25 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

55. [REDACTED]

[REDACTED]. Ex. III, AUTH_00092142 to 143 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. JJJ, AUTH_00091909 to 910 ([REDACTED])

[REDACTED]

[REDACTED]). Ex. KKK, Deposition of Dane Brown (Authenticom Rule 30(b)(6) designee) (“Brown Tr.”) (Apr. 5, 2019) at 153:4-10 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. None of the Continental Counter-Defendants contributed to any alleged circumvention of CAPTCHA by Authenticom. [REDACTED]

[REDACTED]. Ex. DDD, Stroz Report ¶ 115 [REDACTED]

[REDACTED] *id.* ¶ C4 [REDACTED]

[REDACTED]

[REDACTED] *id.* ¶ C5 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED] Ex. DDD, Stroz Report

[REDACTED]

[REDACTED]); Ex. HHH, Tenaglia Report; Ex. F, Rubinfeld Report (s[REDACTED]); Ex. Rubinfeld Report ([REDACTED]).

58. [REDACTED]

[REDACTED] Ex. G, Rubinfeld Tr. at 364:3-9; Ex. G, Rubinfeld Report ¶ 78 & Table 5 ([REDACTED]).

59. In late 2016, Authenticom developed the “Profile Manager” computer program (or “script”). [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. DDD, Stroz Report ¶ C36.

60. [REDACTED]

[REDACTED]

[REDACTED] Ex. NNN, CDK-2665782 at p. 77
[REDACTED]).

61. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Ex. DDD, Stroz
Report ¶ C36.

62. [REDACTED]
[REDACTED] Ex. DDD, Stroz Report ¶ C37.

63. [REDACTED]
[REDACTED]
[REDACTED]. DDD, Stroz Report ¶¶ C49, C51 ([REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]); Ex.
EEE, Stroz Tr. at 271:17-274:10 ([REDACTED]
[REDACTED]
[REDACTED]; Ex. OOO, Expert Rebuttal Report of Seth Nielson, Ph.D., dated Nov. 15, 2019,

at ¶ 368 ([REDACTED]
[REDACTED]).

64. [REDACTED]

[REDACTED]

[REDACTED] Ex.

DDD, Stroz Report ¶ C36.

65. [REDACTED]

[REDACTED]

[REDACTED] Ex. DDD, Stroz Report ([REDACTED]

[REDACTED]); Ex. HHH, Tenaglia Report

([REDACTED]); Ex. F, Rubinfeld Report ([REDACTED].

DATED: May 20, 2020

Respectfully submitted,

/s/ Peggy J. Wedgworth

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CERTIFICATE OF SERVICE

I, Peggy J. Wedgworth, an attorney, hereby certify that on May 20, 2020, I caused a true and correct copy of the foregoing **DEALERSHIP COUNTER-DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT ON CDK GLOBAL, LLC'S COUNTERCLAIMS** to be filed and served electronically via the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Peggy J. Wedgworth

Peggy J. Wedgworth